

1 Mark Mausert
2 NV Bar No. 2398
3 930 Evans Avenue
4 Reno, NV 89512
5 (775) 786-5477
6 Fax (775) 786-9658
7 mark@markmausertlaw.com
8 Attorney for Plaintiffs
9

10 **IN THE UNITED STATES DISTRICT COURT**

11 **IN AND FOR THE DISTRICT OF NEVADA**

12 MAUREEN McKISSICK &
13 DEANNA GESCHEIDER,

14 CASE NO. 3:17-cv-00458-MMD-VPC

15 Plaintiffs,

16 vs.

17 CITY OF RENO and DOES I-X,

18 **PLAINTIFFS' MOTION TO RECUSE**
19 **THE RENO CITY ATTORNEY'S**
20 **OFFICE**

21 Defendants

22

23 COME NOW plaintiffs, through counsel, who hereby move to recuse the Reno
24 City Attorney's Office, and all attorneys in the employ of that Office, from appearing as
25 counsel of record in this case, as well as from directing/overseeing this litigation. This
26 Motion is supported by the pleadings on file herein and by the accompanying points and
27 authorities.

28 Points and Authorities

29 A motion to recuse an attorney should not be lightly filed, or granted. Counsel
30 has, in 36 years of practice, never filed such a motion. Here, the circumstances militate
31 strongly for the recusal of the Reno City Attorney. Karl Hall, Esq. is an elected official.
32 Accordingly, he was not hired by the Reno City Council in the usual fashion. More
33 importantly, he may not be removed in the usual manner. Mr. Hall has a strong motive to
34 conceal the misconduct he has indulged in – as opposed to properly litigating for his
35 client, the City of Reno. The normal duties of an attorney re his client will be subject to

1 compromise. Instead of focusing on the best result for his client, Mr. Hall is likely to
2 concentrate on the best result for himself, per how he appears in the public eye. Counsel
3 does not lightly make this observation. It is made on the track record Mr. Hall has
4 established since June 2016.

5 The misconduct, which has occurred to date, includes the following:

- 6 1. Willfully failing to keep his client, e.g., the City Council, timely apprised of
7 material facts;
- 8 2. Insisting on a formal sexual harassment complaint as a predicate to conducting an
9 investigation;
- 10 3. Arranging for an inadequate initial investigation by Attorney Alice Campos
11 Mercado, in violation of the duty to conduct a fair and thorough investigation in a timely
12 manner;
- 13 4. Comprising the independence of retired Judge David Wall and thereby sabotaging
14 Judge Wall's ability to conduct a thorough second investigation which the Council
15 directed to be independent of Mr. Hall;
- 16 5. Arranging a meeting with the plaintiffs and their attorney under false pretenses,
17 i.e., Mr. Hall dissembled as to the purpose of the meeting (he claimed the meeting was to
18 be had for settlement discussions). In fact, Mr. Hall desired to effect ex parte contact
19 between Council members and the plaintiffs – there was no meaningful discussion of
20 settlement;
- 21 6. Initiating extensive, unethical contact with the press;
- 22 7. Selective leaking of case documents to the press, including the plaintiffs'
23 settlement position;
- 24 8. Prematurely disclosing the identities of the plaintiffs/sexual harassment
25 complainants to the alleged perpetrator, City Manager Andrew Clinger, while failing to
26 take any reasonable measures to protect plaintiffs against retaliatory hostility emanating
27 from Mr. Clinger and his entourage and while failing to prevent collusion and witness
28 intimidation by Mr. Clinger and his "unicorn," Assistant City Manager Kate Thomas;
- 29 9. Failing to repudiate or remediate the statements of City Manager Clinger, which
30 Mr. Clinger made subsequent to learning of the identities of the plaintiffs and subsequent
31 to being prematurely and inaccurately told he was found innocent by Mr. Hall, and

1 whereby Mr. Clinger mischaracterized the plaintiffs as liars and openly invited retaliatory
2 hostility against the plaintiffs;

3 10. After Mr. Clinger publicly attacked the complainants, Mr. Hall publicly supported
4 him, i.e., he falsely confirmed the initial investigation found no evidence of wrongdoing.
5 Mr. Hall engaged in this deception notwithstanding the fact his Assistant City Attorney,
6 Mark Dunagan, acknowledged the investigation was deficient;

7 11. Openly trivializing the complaints of sexual harassment and manipulating the
8 ensuing investigations, i.e., characterizing the investigation as a “witch hunt,”
9 spearheaded by the complainants;

10 12. Trivializing blatant sexual harassment despite multiple eye-witness accounts, i.e.,
11 Clinger’s rubbing of plaintiff Gescheider’s thigh at a meeting, by characterizing it as only
12 the “touching of a leg”;

13 13. Exhibiting an openly hostile and adversarial manner to the complainants
14 subsequent to their complaints of sexual harassment;

15 14. Failing to take prompt action after being informed of retaliation, e.g. the burglary
16 of plaintiff Gescheider’s office (her attorney-client communication file was stolen);

17 15. Overseeing a massive payment, of approximately a quarter of a million dollars, to
18 Mr. Clinger notwithstanding his admitted malfeasance, i.e., retaliation against Title VII
19 complainants and systemic destruction of City records – malfeasance which excused the
20 City from the obligation to pay Mr. Clinger per the terms of his contract;

21 16. Allowing Mr. Clinger, either knowingly or negligently, for years, to destroy City
22 records – conduct which constituted felonies per NRS 239.320;

23 17. Attempting to force the complainants to return to a work environment which had
24 not been thoroughly investigated, and most importantly, remediated, thereby violating the
25 terms of his own administrative leave agreement with the claimants;

26 18. Exhibiting a focus inimical to remediation. That is, Mr. Hall focused throughout
27 on future litigation – and thereby guaranteed such litigation would occur. Mr. Hall should
28 have focused on compliance with the City’s policy as required by *Ellerth/Faragher*; and,

29 19. Wasting tax-payer monies by drawing the City into expensive litigation.

30

1 **Argument: THE CITY ATTORNEY, VIA EXTRAORDINARY CONDUCT,**
2 **HAS CREATED A CONFLICT OF INTEREST WHICH**
3 **WARRANTS RECUSAL.**

5 Rule 1.7 of the Nevada Rules of Professional Conduct reads:

6 **Rule 1.7. Conflicts of Interest: Current Clients.**

7 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if
8 the representation involves a concurrent conflict of interest. A concurrent conflict
9 of interest exists if:

- 10 (1) The representation of one client will be directly adverse to another client; or
11 (2) There is a significant risk that the representation of one or more clients will
12 be materially limited by the lawyer's responsibilities to another client, a former
13 client or a third person *or by a personal interest of the lawyer.*

14 (b) Notwithstanding the existence of a concurrent conflict of interest under
15 paragraph (a), a lawyer may represent a client if:

- 16 (1) The lawyer reasonably believes that the lawyer will be able to provide
17 competent and diligent representation to each affected client;
18 (2) The representation is not prohibited by law;
19 (3) The representation does not involve the assertion of a claim by one client
20 against another client represented by the lawyer in the same litigation or other
21 proceeding before a tribunal; and
22 (4) Each affected client gives informed consent, confirmed in writing.

23 Emphasis added.

24 This case presents an unusual fact pattern – one peculiarly suited to recusal. Mr.
25 Hall is an elected official. As such, he is not subject to the customary level of control a
26 client exercises over an attorney. For example, he cannot be fired, absent a super-
27 majority vote (six out of seven) of the City Council members. Further, this case
28 implicates the public fisc. It is within this context Mr. Hall's office so badly processed
29 complaints of sexual harassment. Instead of mitigating the situation, Mr. Hall directly
30 fostered retaliatory hostility – to the point at which the plaintiffs resigned/were
31 constructively discharged. These facts lend themselves to an unsettling conclusion, to
32 wit, if the City Attorney's Office continues to provide representation, this litigation will
33 be conducted per an ulterior motive, i.e., the best interest of Mr. Hall, as opposed to the
34 best interest of the City of Reno. Because of Mr. Hall's elected status the City Council's
35 ability to control Mr. Hall is very limited. Further, Mr. Hall has consistently and
36 deliberately withheld information from the Council, especially regarding his misconduct,
37 and *there is no other mechanism through which the Council can become informed.* The
38 undersigned is prohibited per Rule 4.2 from contacting Council members. These

1 circumstances call for intervention by the Court – to ensure this case will be
 2 professionally litigated with an eye to achieving a just resolution based on the merits.

3 The propriety of recusal is illustrated by consideration of the Court’s emphasis on
 4 achieving good faith settlements. Most cases amicably settle, often with the assistance
 5 of the Court via the Early Neutral Evaluation Program, or a settlement conference. At
 6 every turn the parties are actively encouraged to realistically evaluate their cases,
 7 minimize the effect of emotion and ego, consider risk, and attempt to achieve a
 8 negotiated resolution. Here, given Mr. Hall’s misconduct, it is unlikely this process will
 9 occur. More likely, the orientation, which in large part created this case, will continue.
 10 Mr. Hall will not be paying the bill. The taxpayers of the City of Reno will fund this
 11 litigation. However, instead of having a skilled attorney at the helm, evaluating the case
 12 based on the merits, and in the best interest of the client, the attorney who committed the
 13 indiscretions alleged within this motion will be making decisions.

14 Mr. Hall’s misconduct began before my clients complained and served as a
 15 catalyst for their complaints. In the days after the June 22, 2016 meeting, presided over
 16 by Mr. Hall, in which Mayor Hillary Scheive directed the complainants to report any
 17 instances of sexual harassment, Finance Director Chisel informed Mr. Hall several
 18 women had confided in him regarding sexual harassment by City Manager Andrew
 19 Clinger. Mr. Chisel urged Mr. Hall to open an investigation. Mr. Hall refused, absent a
 20 formal complaint.¹ My third client, Ms. Brianna Wolf, who is filing a separate lawsuit
 21 and will seek to join this case, was thereby compelled to file a formal complaint on June
 22 29, 2016. Ms. McKissick and Ms. Gescheider followed two days later.
 23 Contemporaneously, Mr. Hall intervened to stop a Reno Police Department investigation
 24 into reports of sexual harassment by Mr. Clinger requested by the Mayor on or around
 25 June 22, 2016.²

26 Mr. Hall’s insistence on a formal complaint as a predicate to taking action was
 27 highly improper, showing either a lack of understanding of City Policy/federal law, a
 28 desire to protect Clinger or perhaps both. City Policy 607 VII(5) promises employees an
 29 investigation will be quickly conducted regardless whether the complaint is filed verbally

¹ See Ms. Gescheider, Ms. McKissick and Ms. Wolf Declarations

² See Wall Report pp. 41 and 60

1 or in writing. In *McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1121 (th Cir. 2004), the
 2 Ninth Circuit repudiated Mr. Hall's insistence on a formal complaint as a predicate to
 3 initiation of an investigation.

4 GTE's remediation of DeLeon's racial comments also gives cause for concern.
 5 Although counseling and a warning may suffice if successful in stopping the
 6 harassment, *see Intlekofer*, 973 F.2d at 779, GTE did not issue this warning until
 7 McGinest had filed a complaint with the EEOC. In fact, McGinest had informed
 8 his manager or immediate supervisor of the events involving Noson, Hughes,
 9 DeLeon, and others, to no avail. In each of these cases, GTE did not respond until
 10 McGinest initiated formal proceedings. This delay does not satisfy Title VII's
 11 requirement of prompt remedial action. *See, e.g., Fuller*, 47 F.3d at 1528;
 12 *Intlekofer*, 973 F.2d at 778; *Steiner*, 25 F.3d at 1464.

13 Also see, *Equal Employment Opportunity Commission v. Dinuba Medical Clinic*, 222
 14 F.3d 580, 587 (9th Cir. 2000) (Sexual harassment complaints need not be in writing.)

15 When filing the complaint, Human Resources Director Kelly Leerman, in
 16 conformance with city policy, assured Ms. Wolf her identity would remain confidential.³
 17 However Mr. Hall revealed her identity to Mr. Clinger the very afternoon she filed. Mr.
 18 Hall knew he was not supposed to reveal the identity of a sexual harassment complainant.
 19 Per Director of Human Resources Kelly Leerman, Hall did so anyway.⁴ This not only
 20 exposed Ms. Wolf to retaliatory hostility, but also compromised Ms. McKissick as Ms.
 21 Wolf's supervisor. Mr. Hall violated the promise made to Ms. Wolf by the City's sexual
 22 harassment policy. City Policy 607 states "[c]onfidentiality will be maintained
 23 throughout the investigatory process to the extent consistent with conducting an
 24 investigation and determining appropriate corrective action."

25 Subsequently, Mr. Hall *lied* to Ms. Wolf regarding the disclosure of her identity.
 26 On July 18, 2016, Mr. Hall met with Ms. Wolf. Mr. Hall unequivocally denied having
 27 disclosed Ms. Wolf's identity. Ten minutes before Mr. Hall's denial, Ms. Leerman
 28 informed Ms. Wolf of the fact Mr. Hall did disclose her identity. She also recounted a
 29 conversation with Mr. Hall, wherein Mr. Hall asked Ms. Leerman if he should apologize
 30 to Ms. Wolf for the disclosure.⁵ Accordingly, when Hall outright lied, Ms. Wolf knew
 31 Hall was lying. Ms. Wolf informed Ms. McKissick that Mr. Hall could not be trusted,

³ See Ms. Wolf Declaration

⁴ Wall Report, p.45, last full paragraph

⁵ See Ms. Wolf Declaration

1 i.e., he lied about breaching confidentiality and this prompted both of them to seek
 2 counsel for protection on July 19, 2016.

3 Mr. Hall breached confidentiality in the worst way possible, i.e., he told the
 4 accused, very early on, of the allegations and of the identity of one of the complainants.
 5 Mr. Hall also appears to have been less than forthright with Judge Wall during the second
 6 investigation.

7 Hall said he met with Clinger shortly after the first complaint was filed. Hall
 8 advised him generally that the complaint alleged sexual harassment and told
 9 Clinger there would be an investigation. *Hall couldn't recall if he told Clinger the*
 10 *names of the complainants, but believes he might have done so as to warn Clinger*
 11 *not to retaliate against them.* Hall does not recall Clinger's initial reaction to
 12 being told of the complaints.

13 November 21, 2016 "Confidential Investigation Report" by Judge Wall (hereafter
 14 referred to as Wall Report), p.47 (Emphasis Added). A *copy of the redacted Report*
 15 *accompanies this Motion.*

16 The proposition Mr. Hall revealed the complainants' identities to facilitate a
 17 warning to Mr. Clinger to forego from retaliation is disingenuous. Human Resources
 18 Director Kelly Leerman warned Mr. Hall to maintain confidentiality. The only reasonable
 19 inference is Mr. Hall dissembled to Judge Wall for an ulterior purpose, i.e., to insulate
 20 himself from the consequences of disregarding Director Leerman's advice.

21 The consequences of revealing the identity of Ms. Wolf to Mr. Clinger at a very
 22 early stage went beyond allowing Mr. Clinger an opportunity to retaliate. Mr. Hall gave
 23 Mr. Clinger a head start. He was provided with a chance to coordinate with employees
 24 who favored him – or had a reason to conceal facts – and an opportunity to intimidate
 25 witnesses. Indeed, Mr. Clinger and Ms. Thomas apparently colluded, evaluating the
 26 evidence against them and framing a counter-narrative that depicted Ms. McKissick as
 27 the mastermind behind Ms. Wolf's complaints.⁶ Mr. Clinger and Ms. Thomas also both
 28 attempted to bias key witnesses prior to their interviews with the investigator. Ms.
 29 Thomas informed Ms. Gescheider right before her interview with Ms. Mercado that Mr.
 30 Clinger had retained his full text history and implied he had compromising texts from
 31 Ms. Gescheider and nothing compromising in his text history from Ms. Thomas.⁷ Mr.
 32 Clinger's secretary Ms. Siddharthan was apparently influenced to lie about her

⁶ See Ms. McKissick and Ms. Wolf Declarations

⁷ See Ms. Gescheider Declaration

1 perceptions of Mr. Clinger's relationships after being lobbied by Mr. Clinger. Ms.
 2 Siddharthan's statements to Ms. Wolf and Ms. McKissick stand in direct contrast to the
 3 sanitized statements she provided to Ms. Mercado.⁸

4 On July 18, 2016, Ms. Wolf informed Mr. Hall of the fact Assistant City Manager
 5 Kate Thomas was spreading rumors to the effect she and Ms. McKissick were conspiring
 6 to take her and Mr. Clinger down. Ms. Wolf also pointed out the only way Ms. Thomas
 7 could be aware of her identity was if Mr. Clinger told her. When confronted with
 8 evidence of collusive behavior directly resulting from his breach, Mr. Hall was
 9 indifferent. Instead of exhibiting alarm and taking action, Mr. Hall trivialized this
 10 activity. He countered with the statement, "How is that retaliation?"⁹ Hall took no
 11 measures to protect Ms. Wolf and Ms. McKissick. This response stands in stark
 12 contradiction to his statements to Judge Wall that he informed Mr. Clinger of identities so
 13 as to prevent retaliation. The clear retaliation by Ms. Thomas and the breach in
 14 confidentiality by Mr. Clinger were not investigated or remediated. The rejoinder is
 15 obvious and one which should have been known to the City Attorney. Spreading such
 16 rumors has a readily predictable effect, to wit, employees are encouraged thereby to
 17 engage in acts of retaliatory hostility and to ostracize. Mr. Hall knew this, and yet ignored
 18 the report. By prematurely sharing details with Mr. Clinger, he encouraged such
 19 retaliatory hostility. And by his inaction, he ratified the retaliatory hostility fomented by
 20 Mr. Clinger and Ms. Thomas.

21 Mr. Hall repeatedly failed to curb retaliatory hostility. For instance, Mr. Hall
 22 protected William Dunne, even after several reports were made by the complainants of
 23 Mr. Dunne spreading defamatory rumors and threatening revenge.¹⁰ Mr. Hall also failed
 24 to timely respond to the burglary of Ms. Gescheider's office – he was notified of the
 25 burglary on July 29, 2016 and did not initiate an investigation for a full two weeks.

26 Mr. Hall made further missteps in overseeing the first investigation completed by
 27 outside counsel, Alice Campos Mercado. The parameters of Ms. Mercado's investigation
 28 were evidently strictly controlled to preclude inquiry into Ms. McKissick's complaints.
 29 The retaliatory hostility which Ms. McKissick endured as the result of sexual favoritism,

⁸ See Ms. Wolf and Ms. McKissick Declarations

⁹ See Ms. Wolf Declaration

¹⁰ See Ms. Gescheider, Ms. McKissick and Ms. Wolf Declarations

in favor of Ms. Thomas, was viewed as generic harassment – unrelated to Title VII.¹¹ In fact, during her interview with Ms. Mercado, Ms. Wolf expressly linked the favoritism directed at Ms. Thomas by Mr. Clinger, the transfer of duties from Ms. Thomas to Ms. McKissick, and ostracism of Ms. McKissick by Ms. Thomas and her entourage to the sexual relationship between Mr. Clinger and Ms. Thomas and the liaison she overheard in May or June of 2015. Yet Ms. Mercado continually redirected Ms. Wolf and made no note of her claims on behalf of Ms. McKissick in her Report.¹² Instead of dealing with dysfunction, directly caused by sexual favoritism, Ms. Mercado ignored the blatant and protracted hostility orchestrated by Ms. Thomas toward Ms. McKissick.

Conduct which flowed from Mr. Clinger's sexual favoritism, but which was not itself inherently "sexual" is still actionable. See, e.g., *Oncale v. Sundowner Offshore Services, Inc.*, 532 U.S. 75, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998); *Draper v. Coeur Rochester*, 147 F.3d 1104 (9th Cir. 1998). In *Draper*, the Court wrote:

Discriminatory behavior comes in all shapes and sizes, and what might be an innocuous occurrence in some circumstances may, in the context of a pattern of discriminatory harassment, take on an altogether different character, causing a worker to feel demeaned, humiliated or intimidated on account of her gender. See *Meritor Savings*, 477 U.S. at 65, 106 S.Ct. 2399 (noting that employees have the 'right to work in an environment free from discriminatory intimidation, ridicule, and insult').

147 F.3d at 1109.

During their interviews, Ms. Wolf and the two plaintiffs provided fairly comprehensive information to Ms. Mercado about sexual harassment *and other misconduct*.¹³ The "no finding" result of Ms. Mercado's investigation did not arise from a failure of complainants/witnesses to provide accurate and compelling information, but rather from a studied refusal to pursue information which was provided. How did that happen? Additionally, all three of my clients reported retaliation as a result of making the complaint to Ms. Mercado.¹⁴ Yet Ms. Mercado only chose to investigate the retaliation reported by Ms. Gescheider. Ms. Mercado, a skilled and knowledgeable Title VII lawyer, did not unilaterally decide to forego the benefit of her expertise, acquired per many years

¹¹ See Ms. Wolf and Ms. McKissick Declarations

¹² See Ms. Wolf Declaration

¹³ See Ms. Gescheider, Ms. McKissick and Ms. Wolf Declarations

¹⁴ See Ms. Gescheider, Ms. McKissick and Ms. Wolf Declarations

1 of practice. The parameters which Mr. Hall imposed forced Ms. Mercado to ignore the
 2 information freely provided. Even if the incriminating information could somehow be
 3 divorced from the designation of sexual harassment (given such cases as *Draper* it is hard
 4 to see how a legitimate distinction could be made), the allegations nonetheless involved
 5 serious misconduct by the City Manager.

6 On Friday, July 15, 2016 Ms. McKissick and Ms. Gescheider each scheduled
 7 appointments with the Human Resources Director Leerman to report an uptick in
 8 retaliatory hostility by Mr. Clinger, Ms. Thomas and their entourage. In each of those
 9 meetings Ms. Leerman informed the plaintiffs that while Ms. Mercado had not yet
 10 delivered the investigation report, she had nonetheless communicated she was not going
 11 to be able to make a finding of sexual harassment.¹⁵ Ms. McKissick was suspicious and
 12 questioned how that could be possible given what she knew had been reported by herself
 13 and Ms. Wolf. She also realized Mr. Clinger must have been told of the “no-finding
 14 result,” a circumstance which explained the increase in retaliation. In response, Ms.
 15 Leerman admitted to Ms. McKissick the scope of Ms. Mercado’s investigation had been
 16 set “too narrow.” Later that afternoon Ms. McKissick was expressly informed, by
 17 Assistant City Attorney Mark Dunagan, “the process was flawed”, or words to that direct
 18 effect, and the City knew it needed to fix the mistake with another investigation.¹⁶
 19 However, when Ms. Leerman and Mr. Hall were confronted by Ms. Wolf on Monday,
 20 July 18, 2016 with the impropriety of revealing results to the perpetrator before the City
 21 Council, they both flatly denied they had told anyone anything about the results –
 22 ***another outright lie.*** They did acknowledge a plan to provide the City Council with a
 23 significant list of concerning behaviors by Mr. Clinger exposed by the investigation,
 24 regardless whether the investigation found a violation of the sexual harassment policy.¹⁷
 25 They were attempting to whitewash the artificial parameters of the Mercado investigation
 26 that they had clearly acknowledged on the 15th with lies and a work-around scheme as
 27 communicated on the 18.th They apparently spent the weekend fomenting a cover-up
 28 strategy.

¹⁵ See Ms. Gescheider and Ms. McKissick Declarations

¹⁶ See Ms. McKissick Declaration

¹⁷ See Ms. Wolf Declaration

1 Because Mr. Clinger showed a marked increase in his rage towards the claimants
 2 starting July 15th, Mr. Hall almost certainly also told Mr. Clinger of the early “results” of
 3 the Mercado investigation.¹⁸ Even members of Council noted how Mr. Clinger was newly
 4 emboldened to forcefully insist on his innocence. On July 21, 2016, Councilwoman
 5 Naomi Duerr attended a lunch meeting with Mr. Clinger. Councilwoman Duerr told Mr.
 6 Clinger that she was aware of the claims and hoped the investigation would go well so
 7 that everyone could move forward (note, the official results of the Mercado Investigation
 8 were still unknown to Council and, as noted, should have been unknown to everyone
 9 else). Councilwoman Duerr said at that point Mr. Clinger “goes ballistic,” proclaiming
 10 his innocence in an angry outburst that lasted nearly an hour. Councilwoman Duerr
 11 described him as “furious.” No complainants’ names were mentioned, but Mr. Clinger
 12 threatened vengeance against them, saying things like, “they’re evil,” and “they’ll pay.”
 13 He told Councilwoman Duerr it’s a conspiracy against him, which he declared was a
 14 felony, and he vowed to hold them accountable. Councilwoman Duerr said that Mr.
 15 Clinger went on to say things like, “Payback’s a bitch,” and Councilwoman Duerr
 16 explained that she was “freaking out” at this point and tried to calm Mr. Clinger down.
 17 She told him he shouldn’t be at work and should take a few days off. He agreed to do so.

18 But the following day, July 22, 2016, Duerr saw Clinger at a City firehouse
 19 dedication event. She also saw [deleted] as she spoke with Councilwoman
 20 Neoma Jardon and Mayor Schieve. Duerr told [deleted] she should leave because
 21 Clinger was there. That afternoon, *Duerr said she had a conversation with Karl*
Hall and relayed to him Clinger’s lunch conversation with her, including the
threats about taking revenge. Duerr’s message to Hall was that Clinger ought not
 22 to be in the office. *Duerr said Hall told her that Clinger had made the same type*
of comments to him.

26 Report, p.26 (emphasis added); also see, p.53 (Also see: Clinger threatened to fire the
 27 three complainants).

28 City Attorney Hall was placed on notice of Mr. Clinger’s propensity for
 29 retaliation/vengeance by many people, including by Mr. Clinger, and failed to respond.
 30 Instead, Mr. Hall intensified the harassment. City Manager Clinger was allowed, for a
 31 considerable period, to vent rage at the plaintiffs. He did so in the presence of Council

¹⁸ On the bottom of p.47 of the Wall Report, Mr. Hall admits he told Mr. Clinger – and no one else – the results of the Mercado Investigation but estimates that date as the 18th or 19th of July. The likelihood that it actually occurred on the 15th of July is supported on p.75 where Wall notes texts between Mr. Clinger and Ms. Thomas start to discuss details of the allegations on July 15th.

1 members. Worse, Mr. Hall allowed Mr. Clinger to use Ms. Mercado's inadequate
 2 investigation as a springboard to publicly castigate the plaintiffs in a press release, i.e., to
 3 encourage their co-workers to ostracize them.¹⁹ That ostracism is a form of sexual
 4 harassment. *See, e.g., Draper v. Coeur Rochester*, 147 F.3d 1104 (9th Cir. 1998)
 5 (morphing erotic-based harassment into derision does not constitute cessation of sexual
 6 harassment). No response from the City was timely had.

7 Mr. Hall did nothing to publicly correct Mr. Clinger's false statements. Despite
 8 the City implicitly admitting the inadequacy of the Mercado investigation by embarking
 9 on a second investigation, Mr. Hall made statements to the media confirming the
 10 Mercado Investigation found no evidence of misconduct.²⁰ The inaccuracy of Mr. Hall's
 11 public statements was confirmed by Special Counsel Greg Kamer. According, to
 12 information conveyed to Ms. McKissick (unsolicited), by Mayor Schieve on September
 13 20, 2016, Special Counsel Kamer advised her the Mercado Investigation was so poorly
 14 done as to be worthless, i.e., it could not be used as the basis for any action.²¹

15 The second investigation by Judge Wall was, ostensibly, explicitly devised to
 16 preclude Mr. Hall's involvement.²² However the resulting November 21, 2016

¹⁹ See Andrew Clinger July 30, 2016 Press Release:

"I am not going to sit back and let people attack my character or attempt to ruin my reputation with outright lies" and "It is important to note the city attorney told me personally the investigation his office initiated, and which was conducted by an impartial, independent law firm, concluded nothing happened and the allegations against me were baseless"

Link: <https://www.scribd.com/document/319745358/Clinger-s-July-30-Statement>

Also see Andrew Clinger August 4, 2016 interview with News4:

"The most important thing for the public to know is that I am innocent" and "This is a process that was handled in Karl Hall's office, who is the City Attorney. And it is important for people to understand that Karl Hall does not work for me. He is an independent elected official. And his office conducted the investigation." Link: <http://mynews4.com/news/local/renos-city-manager-speaks-publicly-for-the-first-time-on-sex-harassment-claims>

²⁰ See Mr. Hall August 8, 2016 interview with News4:

"Hall reconfirmed to News 4 the initial investigation, overseen at the direction of his office, determined no wrongdoing on the part of Clinger." And "Hall expressed disappointment in learning Clinger had placed himself on voluntary administrative leave." Link: <http://mynews4.com/news/local/reno-city-manager-andrew-clinger-places-himself-on-administrative-leave>

²¹ See McKissick Declaration

²² See the City Council discussion at the August 4th Special Meeting to approve the contract with Mr. Kamer. Quotes from Councilman Bobzien confirms the second investigation was intended to be independent of Mr. Hall (emphasis added):

I am very comfortable with delegating this to you [Mayor Schieve]. ... I would move to authorize the appointment of special counsel to manage an investigation of the complaints alleged misconduct of City Manager Andrew Clinger and to *delegate to Mayor Hillary Schieve to select, contract with, and direct the special counsel in an amount not to exceed \$50k.*

And:

1 “Confidential Investigation Report” of retired Judge David Wall shows it was deeply
 2 biased by Mr. Hall.

3 Judge Wall memorialized the necessity of interviewing the complainants, and
 4 disavowed responsibility for his inability to do so, i.e., the City Attorney’s Office (and to
 5 a much lesser degree Special Counsel Kamer) controlled the negotiations which
 6 determined that ability. Report, pp.2-3. Judge Wall wrote:

7 The inability to speak with [the complainants] made the completion of the instant
 8 investigation far more challenging. Access to the complainants would have
 9 allowed me to ask cogent questions regarding their claims, to further attempt to
 10 seek corroboration thereof, to request access to certain documents and personal
 11 information they possess and to take normal investigatory steps to determine facts
 12 and assess credibility. Credibility assessment is normally conducted in one-on-
 13 one interviews, or otherwise determined in the existence or non-existence of
 14 corroborative evidence. Additionally, in interviews the claimants would have had
 15 the opportunity to support their versions of events. *It is therefore a fair criticism*
 16 *of this Report to allege that it was completed without having spoken with the very*
 17 *complainants who necessitated it in the first place.*

18 Report, p.3, first paragraph (emphasis added).

19 Mr. Hall’s insistence on a right to use plaintiffs’ interviews against them resulted
 20 in a refusal by plaintiffs to be interviewed. The plaintiffs manifested a willingness to be
 21 interviewed by Judge Wall (they previously submitted to interviews by Ms. Mercado)
 22 under reasonable conditions.²³ Per *Palmer v. Pioneer Associates, Ltd.*, 118 Nev. 943, 59

Just some clarifying comments on my motion, I understand the scope to be very broad, as much as it needs to be and as thorough as it needs to be. *I also would hope and recognize due to the special circumstances here given the parties reporting lines and everything else, Mayor, you should select someone on staff to assist you with the contract and execution in terms of invoices, billables, etc. and that you keep us apprised because we are delegating this authority to you.* I’m very confident that you will keep the entire Council apprised as well as the public.

And Mr. Hall’s improper involvement in the second investigation was discussed by the City Council at the November 16th Council meeting where the Mayor blamed Hall for not managing costs. In response, Councilman McKenzie pointed out Hall should not be involved *at all* given that the goal of hiring outside counsel was to get independent advice. Councilman McKenzie’s quote (emphasis added):

Mr. Hall, I appreciate the situation you are in because *we are the ones who decided to hire an outside counsel and now we are looking at you and asking why it cost us so much.* That procedure is something that we should be developing as counsel *because when we go to outside counsel it's usually because we have something that we disagree with you about* and we put you in a really strange position when disagree with you and we have hired someone else to give us another opinion, we ask you to be the mediator, so I think that is something that if we ever get those Council policies together that we’ve been working on since I’ve been on this City Council that we do something. It’s qualified in code how we seek outside counsel but this Council has to be the one to establish that policy, we can’t expect Karl to establish that process for us.

²³ Counsel for the plaintiffs proposed the following conditions:

1. Counsel for plaintiffs would be present.

1 P.3d 1237 (Nev. 2002), the Court adopted the "management-speaking agent" test, i.e.,
 2 Rule 4.2. applies to those persons who have authority to bind a party. Since the plaintiffs
 3 are the parties, they obviously possess this authority and therefore fall within the ambit of
 4 Rule 4.2. Accordingly, absent their consent, defendant City of Reno was precluded from
 5 substantive contact with them regarding their allegations. Implicit in these circumstances
 6 is the proposition the plaintiffs were possessed of a right to impose *reasonable*
 7 *conditions*, as a predicate to waiving their Rule 4.2 rights. They did so but Mr. Hall
 8 decided not to agree to them and instead forestalled from a thorough investigation.²⁴ He
 9 insisted on an ability to attempt to use the interviews against the complainants while
 10 knowing that condition was unacceptable and would result in the inability to conduct the
 11 interviews.

12 Per the caselaw quoted herein, the City had an affirmative, non-delegable
 13 obligation to conduct a thorough investigation. The City reneged on that obligation –
 14 because Mr. Hall forestalled from morphing interviews with the plaintiffs into a
 15 mechanism to acquire advantage at trial.²⁵ Insisting on a tactical advantage, to which one
 16 is not entitled as a matter of law, is not a valid reason to abdicate the affirmative
 17 obligation to conduct a thorough investigation. By adopting this position, Mr. Hall
 18 demonstrated bias against the plaintiffs. Worse, he prevented the City from availing itself

-
- 2. The plaintiffs would not question the efficacy of the interviews.
 - 3. The interviews would be used only for internal investigatory purposes. Neither party would offer testimony or evidence as to what was said during the interviews.

The latter condition was intended to avoid a swearing contest. Counsel did not wish to create a situation whereby he would become a witness. Nor did plaintiffs' counsel wish to create a situation whereby Judge Wall would be testifying as to his belief as to what was said during a lengthy, unrecorded interview.

²⁴ See November 2, 2016 report from News4 (emphasis added):

Hall and Mausert are at odds over conditions placed that would allow for the interviews to occur. Mausert said he wants to be present when his clients are being interviewed. He also does not want what they say to be used in the event of a trial. He said, "I don't want to open that door where there is a squabble over what was said in a five-hour interview." He added, "This should be an investigation where the City hopes to obtain information that would allow for it to do the right thing and correct any problems." He said the City is under obligation to conduct an investigation to ensure the workplace is one that adheres to federal law. He said, "This should not be a tool for the City to try and gain 'tactical advantage' in a trial." Hall disagrees. He said, "*My obligation is to protect the City. We want a fair and impartial investigation and if they want to put conditions upon the investigation that are unacceptable, that is their choice.* It is not mine."

Link: <http://mynews4.com/news/local/taxpayers-might-not-be-happy-with-clinger-investigation>

²⁵ See November 2, 2016 report from News4 where the reporter said "Hall wants to be able to use the women's interviews to potentially look for inconsistencies should this matter go to trial." And quoted Mr. Hall as saying, "I would assume that there is one truth now and one truth later if we end up getting sued." Link: <http://mynews4.com/news/local/taxpayers-might-not-be-happy-with-clinger-investigation>

1 of the benefit of the *Ellerth/Faragher* affirmative defense. That defense requires a
 2 prompt, thorough investigation.

3 Mr. Hall bypassed the investigatory and remedial processes and moved into
 4 adversary mode. He used intimidation and retaliation to try to make the complainants
 5 dismiss their complaints. Forcing the complainants into an adversarial position is the
 6 antithesis of remediation. A purpose of remediation is to avoid conflict, i.e. defuse a
 7 volatile situation created by sexual harassment. Mr. Hall's facile approach might work re
 8 weak women, bereft of counsel. Here, Mr. Hall deepened the conflict, and worse, the
 9 City's exposure. This appears to sink to the level of malpractice.

10 City Policy 607, based on Title VII, was a promise to the complainants. By
 11 focusing on winning any potential future litigation, Mr. Hall structured his actions and
 12 statements so as to contravene the City's policy and break the promise inherent in the
 13 policy. Mr. Hall forced the complainants to become litigants and then criticized them for
 14 doing so.²⁶ This misconduct occurred against the backdrop of the City's obligation to
 15 quickly implement an effective remedy.

16 We have held that an effective remedy is one that is "reasonably calculated to end
 17 the harassment" and such remedy should be "assessed proportionately to the
 18 seriousness of the offense." *Ellison v. Brady*, 924 F.2d 872, 882 (9th Cir. 1991)
 19 (citations omitted). The reasonableness and adequacy of the remedy depends upon
 20 its ability to stop the individual harasser from continuing to engage in such
 21 conduct and to discourage other potential harassers from engaging in similar
 22 unlawful conduct.

23 *Mockler v. Multnomah County*, 140 F.3d 808, 813 (9th Cir. 1998); also see, *McGinest v.*
 24 *GTE Service Corp.*, 360 F.3d 1103, 1120 (9th Cir. 2004) ("To be adequate, an employer
 25 must intervene promptly. *Intlekofer v. Turnage*, 973 F.3d 773, 778 (9th Cir. 1992).").

26 In *Mockler v. Multnomah County*, 140 F.3d 808, 813 (9th Cir. 1998), the Court
 27 observed, "[t]he failure to react promptly to a complaint, or to reprimand the harasser
 28 strongly, is evidence relevant to determine whether the employer took sufficient remedial
 29 action." Citing, *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994).

²⁶ See January 20, 2017 statement released by Karl Hall to the media:

"By placing unreasonable conditions on the City's investigation, and counseling his clients not to cooperate with the City's investigator, Mr. Mausert substantially interfered in the City's complaint resolution process, needlessly increased the cost of the investigation for City taxpayers, delayed the timely resolution of this matter, and created a media circus. Mr. Mausert embarked on this course of action knowingly, at his own risk, and ultimately, the risk of his clients. The City looks forward to defending itself in court." Link: <http://www.ktvn.com/story/34138252/city-of-reno-releases-final-investigation-report-on-andrew-clinger>

1 In *Swenson v. Potter*, 271 F.3d 1184, 1193 (9th Cir. 2001), the Court repudiated
2 the sort of manipulation of the investigatory process which has occurred here.

3 The most significant immediate measure an employer can take in response to a
4 sexual harassment complaint is to launch a prompt investigation to determine
5 whether the complaint is justified. An investigation is a key step in the
6 employer's response, see *Swentek v. USAIR, Inc.*, 830 F.2d 552, 558 (4th Cir.
7 1987) (employer obliged to investigate complaint and to present a reasonable
8 basis for its subsequent action), and can itself be a powerful factor in deterring
9 future harassment. By opening a sexual harassment investigation, the employer
10 puts all employees on notice that it will take such allegations seriously and will
11 not tolerate harassment in the workplace. An investigation is a warning, not by
12 words but by action. We have held, however, that the "fact of investigation alone"
13 is not enough. *Fuller*, 47 F.3d at 1529. An investigation that is rigged to reach a
14 pre-determined conclusion or otherwise conducted in bad faith will not satisfy the
15 employer's remedial obligation. See *id.*"

16 Emphasis added.

17 The *Swenson* Court insisted on an investigation which is "fully objective and
18 fair." 271 F.3d at 1196-97. Neither of the two investigations by the City qualify as such.

19 In *McCaw v. Potter*, (2006 U.S. Dist. LEXIS 61774), the Court articulated an
20 analysis directly on point to Mr. Hall's fixation on preparing for litigation. In this context,
21 preparation for litigation is more aptly termed, "preparation for retaliation".

22 Based on the record before it, the Court finds that a jury could reasonably infer
23 that the sexual harassment charge was not pursued in an attempt to retaliate
24 against Plaintiff for bringing the claim. If so, it is reasonably likely that an
25 individual would not file a sexual harassment complaint if she felt that her
26 complaint would not be thoroughly investigated or that she would not be believed.
27 Accordingly, the Court will not dismiss this claim.

28 The Judge Wall Report also reveals Mr. Hall likely never took the allegations
29 seriously. For example, prior to the results of the first investigation, Mr. Hall denigrated
30 the seriousness of Mr. Clinger's conduct. Regarding the thigh rubbing incident,
31 witnessed by Finance Director Chisel, Mr. Hall told Councilwoman Duerr, "it's just a leg
32 being touched." Report, p.26, first full paragraph.

33 Hall did not confine trivializing the plaintiffs' complaints to conversations
34 with Councilwoman Duerr. He voiced the same sentiment to Councilman Paul
35 McKenzie. McKenzie said he didn't meet with any of the complainants prior to
36 their complaints being filed. City Attorney Karl Hall told him about the
37 complaints after they were filed. Hall also mentioned at some point before the
38 completion of the [Mercado] investigation that he thought it was "likely a witch

1 *hunt by disgruntled employees.*" McKenzie found this comment by Hall to be
2 inappropriate.

3 Report, p.33, last full paragraph (emphasis added).

4 Mr. Hall took great liberty in trivializing Mr. Clinger's conduct. This approach is
5 not countenanced by the Circuit, i.e., it was not Mr. Hall's perspective which controls,
6 but that of a reasonable woman.

7 Under the third element to determine whether an environment is sufficiently
8 hostile or abusive to violate Title VII, we look "at all the circumstances, including
9 the frequency of the discriminatory conduct; its severity; whether it is physically
10 threatening or humiliating, or a mere offensive utterance; and whether it
11 unreasonably interferes with an employer's work performance. *Clark County Sch.
Dist. v. Breeden*, 532 U.S. 268, 121 S.Ct. 1508, 1510, 149 L.Ed.2d 509 (2001)
12 (internal quotation marks and citations omitted); see *Nichols*, 256 F.3d at 872.
13 Moreover, "the work environment must both subjectively and objectively be
14 perceived as abusive," *Fuller*, 47 F.3d at 1527 (citation omitted), *and the
15 objective portion of the claim is evaluated from the reasonable woman's
16 perspective. Ellison*, 924 F.2d 879-80.

18 *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 966(9th Cir. 2001)(emphasis added).

19 In *Ellison v. Brady*, 924 F.2d 872, 879-80 (9th Cir. 1991), the Court wrote:

20 By acknowledging and not trivializing the effects of sexual harassment on
21 reasonable women, courts can work towards ensuring that neither men nor women
22 will have to "run a gauntlet of sexual abusive in return for the privilege of being
23 allowed to work and make a living." *Henson v. Dundee*, 682 F.2d 897, 902 (11th
24 Cir. 1982).

25 Mr. Hall's protestations of an innocent intent, re such actions as breaching
26 confidentiality, delaying the investigation, placing unreasonable and artificial parameters
27 on the scope of either investigation, sabotaging the ability of Judge Wall to interview the
28 complainants, etc., should not be well taken. "That is because Title VII is not a fault-
29 based tort scheme. 'Title VII is aimed at the consequences or effects of an employment
30 practice and not at the . . . motivation' of co-workers or employers." *Ellison v. Brady*, 924
31 F.2d 872, 880 (9th Cir. 1991) (citations omitted).

32 That Mr. Hall let his personal views bias the handling of the complaints is an
33 ethical violation of his post. Worse, once the complainants became aware of his missteps
34 and informed him they were seeking counsel, Mr. Hall went into adversary mode and

1 started preparing for litigation. *Seeing the plaintiffs as future potential litigants, Mr.*
 2 *Hall treated them as enemies.*

3 Mr. Hall sought opportunities to malign the plaintiffs in the press. As already
 4 noted, Mr. Hall made improper and unfounded public statements backing-up Mr.
 5 Clinger's claims of innocence to create public doubt about the validity of the plaintiffs'
 6 claims the investigations were mishandled. Mr. Hall publicly blamed the plaintiffs'
 7 counsel for the expense of the investigations.²⁷ Mr. Hall mischaracterized the plaintiffs'
 8 counsel's position on the interviews to create the impression the plaintiffs were
 9 unreasonable and had something to hide.²⁸ Mr. Hall did this to redirect public outrage
 10 about the cost of the investigations from himself (as he is arguably to blame for the need
 11 for a second investigation and the failure to reach reasonable terms for interviewing the
 12 plaintiffs during the second investigation).

13 If Mr. Hall truly cared about protecting tax-payer monies, he would not have
 14 advised the city council to give Mr. Clinger a quarter-million dollar severance. The City
 15 Attorney ignored provisions in Mr. Clinger's contract which allowed the City to forego
 16 payment to Mr. Clinger, in the event he committed malfeasance. Retaliation against Title
 17 VII complainants, whether the claims are found meritorious or not, is a violation of Title
 18 VII and actionable malfeasance. As noted above, Mr. Hall was very aware of Clinger's
 19 malfeasance prior to disbursement of the funds to Mr. Clinger and his lawyer on
 20 September 15, 2016. And yet, instead of refusing to pay the severance Mr. Hall
 21 negotiated a separation agreement with Mr. Clinger that provided full indemnification.²⁹

22 Mr. Hall further retaliated in the media by abusing the settlement process. After
 23 repeatedly soliciting an offer of settlement from myself, Mr. Hall took the plaintiffs'
 24 settlement proposal and leaked it to the press – to characterize the complainants as
 25 greedy. Contemporaneous with the leak of the plaintiffs' settlement proposal, Mr. Hall
 26 has refused to release other documents not favorable to the City.³⁰ Mr. Hall is very

²⁷ See November 16, 2016 RGJ report:

At Wednesday's meeting, Hall blamed Mausert for the increase in investigation costs. "It was a significant amount of money spent in responding to letters and correspondence submitted by counsel representing the claimants," Hall said. "Tens of thousands of dollars." Link:

<http://www.rgj.com/story/news/2016/11/16/clinger-investigation-cost-jumps-another-75000/94001888/>

²⁸ Again, see Mr. Hall quotes under footnote 26.

²⁹ See Mr. Clinger's separation agreement

³⁰ See August 10, 2016 RGJ report:

1 conscious of the concept and application of privilege. He deliberately abused the
 2 settlement process to further cast plaintiffs in a bad light.

3 In October 2016, Mr. Hall telephoned myself and requested a settlement
 4 conference. I agreed. On October 17, 2016, a meeting was held. The three complainants,
 5 including the two plaintiffs, attended along with myself, Mr. Hall, William Petersen,
 6 Esq., Mayor Schieve, Councilwoman Duerr and Councilwoman Neoma Jardon. Mr. Hall
 7 arranged this meeting under false pretenses. The purpose of the meeting was not to
 8 discuss settlement, but rather to attempt to arrange ex parte contact between the Council
 9 members and the complainants³¹. The specious settlement meeting was traumatic for the
 10 plaintiffs and blindsided them.³² The City had and has a right to forestall from settlement
 11 negotiations. The City does not have a right to set up a bait-and-switch meeting, via
 12 dishonest communications to plaintiffs' counsel.

13 On October 7, 2016 Mr. Hall offered to put the complainants on administrative
 14 leave while Judge Wall investigated the claims of retaliation. Mr. Hall had the plaintiffs
 15 sign an agreement, which explicitly stated the leave was offered through the completion
 16 of the investigation, which was to include recommendations from Special Counsel Kamer
 17 on remediation. On November 17, prior to the completion of the Judge Wall Investigation
 18 and prior to Mr. Kamer's recommendations for remediation, which were never
 19 completed, Mr. Hall instructed Human Resources Director Leerman to order the
 20 complainants back to work, effective immediately. When the complainants protested
 21 nothing had been done to remediate an incredibly hostile work environment, Ms.

The Reno Gazette-Journal filed a public records request for the initial investigation report, as well as letters delivered to the city by Peterson. Reno City Attorney Karl Hall denied the request, claiming those details could harm the ongoing investigation. Link:

<http://www.rgj.com/story/news/2016/08/10/reno-council-hires-vegas-law-firm-manage-clinger-probe/88530648/>

³¹ Incidents which occur during settlement negotiations may be admissible in subsequent litigation. *Bergene v. Salt River Project Agricultural Improvement and Power District*, 272 F.3d 1136, 1144 (9th Cir. 2001). Here, plaintiffs do not seek to admit substantive statements regarding settlement, but rather the facts relative to Mr. Hall's abuse of the settlement process. The document Mr. Hall caused the plaintiffs to sign, whereby they agreed to confidentiality, is itself incriminatory. I regarded such a document as superfluous as I was aware substantive negotiations are inadmissible. Assent to the meeting was obtained via a subterfuge, as were the complainants' signatures.

³² See Ms. Gescheider, Ms. McKissick and Ms. Wolf Declarations

1 Leerman said she agreed. It was Mr. Hall's orders and out of her power to control.³³ **Mr.**
 2 **Hall personally forced the plaintiffs to resign.**

3 In *Pennsylvania State Police v. Suders*, 524 U.S. 129, 124 S.Ct. 2342, 2347, 159
 4 L.Ed.2d 204 (2004), the Court described the circumstances under which a
 5 constructive/wrongful discharge will be deemed to have occurred. A plaintiff "must show
 6 that the abusive working environment became so intolerable that her resignation qualified
 7 as a fitting response." In addition to not addressing retaliation by others, Mr. Hall
 8 personally took actions and made statements which resulted in an intolerable working
 9 environment for the plaintiffs, culminating in an order to return to an admittedly
 10 unremediated environment permeated with retaliatory hostility.

11 Mr. Hall released heavily redacted copies of the Mercado Report and the Wall
 12 Report. Mr. Hall released the Mercado Report, *even though he knew it was deeply flawed*,
 13 as noted above. Mr. Hall released the Wall Report, even though it suffered the same flaws
 14 as the Mercado Report absent interviews with the claimants.³⁴ Mr. Hall sought to
 15 influence public opinion with the inaccurate and incomplete reports. He told a reporter
 16 the heavy redactions were only done to protect identities.³⁵ This was not true. A review of
 17 the unredacted Wall Report shows the redactions were not limited to protecting identities
 18 but also concealed information the City clearly judged damaging; i.e. all references to the
 19 "Hot Crazy Matrix" and "unicorn" were removed.³⁶

20 Further, Mr. Hall chose to release these Report on December 26, 2016.
 21 Incredibly, the City intended to release these Reports just before Christmas, **for the**
 22 **express purpose of ruining the complainants' holidays.** The timing says it all. The City
 23 planned to release the Reports just prior to Christmas but could not complete the

³³ See Ms. Gescheider and Ms. Wolf Declarations

³⁴ See November 2, 2016 report by News4:

For now, it is very possible the investigation could wrap up without the women's participation. Hall was asked about that. He replied, "You know, without their input, it would probably be more lopsided."

Link: <http://mynews4.com/news/local/taxpayers-might-not-be-happy-with-clinger-investigation>

³⁵ See December 28, 2016 report by News4:

"News 4/Fox 11 asked Hall why full paragraphs were redacted from the report. He said, "There are paragraphs that would be indicative of people who participated in the investigation and certainly we want to make sure that we're protecting the identity of our employees so that they feel comfortable coming forward if they have any issues with their employment or the environment here at the city."

Additional note: In the video interview the reporter asked "And that is the only reason things have been redacted?" Mr. Hall responded with an unequivocal "Yes." Link: <http://mynews4.com/news/local/city-of-reno-prepares-for-next-steps-after-release-of-clinger-investigation-report>

³⁶ See Wall Report pp. 4, 11, 19, 46, 49, 54, 58 and 78.

1 redactions in time. So someone was reduced to working over Christmas. Hence the
 2 release on the legal holiday. This is consistent with Mr. Hall's demand the complainants
 3 return to work the Monday of Thanksgiving week. That the City Attorney's Office was
 4 motived by malice is shocking. Mr. Hall's conduct was the antithesis of measured
 5 enforcement of the City's sexual harassment policies. It is well established it is
 6 insufficient merely to have a policy. The policy must be enforced. *Swinton v. Potomac*
 7 *Corporation*, 270 F.3d 794, 810-11 (9th Cir. 2001) (citations omitted).

8 Mr. Hall succeeded in manipulating the press. He also manipulated the City
 9 Council with the same tactic of biased and selective sharing of information. Mr. Hall
 10 failed in his obligation to promptly and fully inform his clients.

11 Per Human Resources Director Leerman, Mr. Hall failed to keep the City Council
 12 informed of the allegations against Mr. Clinger during the first investigation. He cited
 13 confidentiality as his excuse for this failure.³⁷ Mr. Hall similarly justified his failure to
 14 timely inform the Council to Ms. Wolf on July 18, 2016 by stating he did not trust the
 15 Council and was worried the Council would initiate its own investigation. In other
 16 words, Mr. Hall abdicated his fiduciary duty to his client, apparently because he wished
 17 to control the investigatory process. When Ms. Wolf informed Mr. Hall City Policy 607
 18 required Council be fully informed from the start and actively engaged throughout the
 19 process to respond to possible retaliation, Mr. Hall admitted he was not familiar with the
 20 policy. When Ms. Wolf pointed out Mr. Hall's decision to not inform Council favored
 21 Clinger, Mr. Hall shrugged.³⁸ Mr. Hall assumed control of a Title VII investigation
 22 process while ignorant of and indifference to City and Federal policies.

23 On July 18, 2016, Human Resources Director Leerman informed Ms. Wolf she
 24 and Mr. Hall had arrived at a strategy to employ the attorney-client privilege to inform
 25 Council while limiting public disclosure. When Ms. Wolf questioned why this
 26 mechanism was not employed earlier to properly inform Council – neither Ms. Leerman
 27 nor Mr. Hall had an answer. They promised to fully brief Council at an attorney-client
 28 session called during the July 20, 2016 regular Council meeting.³⁹ However, at that
 29 meeting, Mr. Hall only informed the Council the three complainants had retained counsel

³⁷ See Wall Report, p.46, first paragraph

³⁸ See, Ms. Wolf Declaration

³⁹ See Ms. Wolf Declaration

1 and of the need to prepare for litigation.⁴⁰ Rather than describing the complaints, i.e.,
 2 fully informing his client, Mr. Hall identified the three complainants by name and
 3 instructed the City Council members to refrain from speaking with the complainants.⁴¹
 4 Compounding the problem, Mr. Hall prevented the Council from speaking with the
 5 claimants but did not prevent them from speaking with Mr. Clinger, Ms. Thomas or any
 6 of the other perpetrators, essentially ensuring a one-sided view by the Council. Mr. Hall
 7 ensured the complainants would not tell their story. He caused a letter to be sent which
 8 threatened termination if confidentiality was violated.⁴² The plaintiffs were gagged while
 9 Mr. Hall, Mr. Clinger and Ms. Thomas presented a carefully crafted story to the Council,
 10 City staff and the media.

11 As of October 17, 2016, Mr. Hall still failed his obligation to timely and fully
 12 inform City Council of Mr. Clinger's misconduct – or any other details that were
 13 unfavorable to himself – which meant the three Councilwomen who attended the
 14 “settlement conference” knew practically nothing. The ignorance of the three
 15 Councilwomen of the facts of the case was obvious. Their ignorance also became a topic
 16 of conversation. They were struck by how little they knew and by their lack of control,
 17 e.g. they were shocked to learn the Acting City Manager Bill Thomas told the
 18 complainants he could not keep them safe – the opposite message of what the
 19 Councilwomen had asked Mr. Thomas to communicate.⁴³

20 Even when Mr. Hall was expressly told of his obligation to inform the Council by
 21 Ms. Wolf in July, he abdicated his duty. Four months later, Mr. Hall still had not
 22 discharged this duty. Council is the ultimate decision maker and must be properly

⁴⁰ See September 30, 2016 RGJ report:

Reno City Attorney Karl Hall provided the attorney general with an affidavit saying he and another lawyer met with council members on July 20 to advise them of the three sexual harassment complaints against Clinger and discuss the potential litigation that may ensue. It appears July 20 was the first time Hall formally met with council to discuss the allegations from the three women that were filed June 29. Link: <http://www.rgj.com/story/news/2016/09/30/ag-no-open-meeting-law-violation-reno-city-council/91320782/>

⁴¹ See Ms. McKissick Declaration and see September 30, 2016 RGJ article:

“Reno City Attorney Karl Hall provided the attorney general with an affidavit saying he and another lawyer met with council members on July 20 to advise them of the three sexual harassment complaints against Clinger and discuss the potential litigation that may ensue.” Link:
<http://www.rgj.com/story/news/2016/09/30/ag-no-open-meeting-law-violation-reno-city-council/91320782/>

⁴² See Ms. Wolf and Ms. McKissick Declarations

⁴³ See Ms. Wolf Declaration

1 informed. Council is accountable for the vote to spend \$225,000 on a second
 2 investigation because Mr. Hall mismanaged the first. *The City Council, before conclusion*
 3 *of this investigation, should have had the benefit of a full analysis of the liability of not*
 4 *agreeing to the complainants' terms to be interviewed by Judge Wall.* Council is
 5 accountable for the vote to award Clinger a full severance, pay his lawyer fees and
 6 indemnify him despite malfeasance that voided the obligation to pay. *The City Council,*
 7 *before disbursing these funds, should have had the benefit of full disclosure by the City*
 8 *Attorney of what he knew of sexual harassment, including retaliatory hostility, along with*
 9 *a learned dissertation of operative sexual harassment law.* Instead, Mr. Hall kept the City
 10 Council in ignorance while playing deceptive games with the press. Mr. Hall's failure to
 11 properly inform the Council has compromised this case to a point where liability and
 12 exposure is significantly increased.

13 It is reasonable to infer Mr. Hall has not informed Council there was another basis
 14 for refusing to pay Mr. Clinger severance: Mr. Clinger's extensive systematic destruction
 15 of public records. Mr. Clinger's use of the Slack and Telegram smartphone applications
 16 for the express purpose of avoiding public discovery is well documented in the Wall
 17 Report (see pp. 12-13, 19-20, 46, 49-50, 52, 87-88). And, of course, as described in the
 18 accompanying Declarations by Ms. McKissick, Ms. Gescheider and Ms. Wolf, prior to
 19 causing apps to be used to destroy records, Mr. Clinger presided over the manual
 20 destruction of records. This activity went on, *for years*, during the watch of City
 21 Attorney Karl Hall. The Nevada Revised Statutes provide:

22 **239.320. Injury to, concealment or falsification of records or papers by
 23 public officer.**

24 An officer who mutilates, destroys, conceals, erases, obliterates or falsifies any
 25 record or paper appertaining to his or her office, is guilty of a category C felony
 26 and shall be punished as provided in NRS 193.130.

27 Mr. Clinger's commission of hundreds, or thousands, of category C felonies
 28 constitutes malfeasance. The City, by virtue of Mr. Clinger's felonious conduct, is now
 29 exposed to sanctions, per claims of spoliation of evidence, in not just this case, but in any
 30 case relevant to the period in which text messages were destroyed. Mr. Hall downplayed
 31 Clinger's felonious conduct to the press. On August 11, 2017, Mr. Hall reasoned if Mr.
 32 Clinger did delete text messages relating to the conduct of the City government, no harm

1 was done as they were likely not related to City business.⁴⁴ However, that is not the case.
 2 Mr. Hall, when making this statement, had the benefit of the Wall Report, which
 3 memorialized Clinger's admission, i.e., he implemented the Slack and Telegram apps *for*
 4 *the express purpose of defeating public records requests.* Mr. Hall's proposition Mr.
 5 Clinger presided over the destruction of thousands of messages between himself and
 6 members of the Executive Staff, and none of those message concerned City business, is
 7 incredible. Rather than deal with Mr. Clinger's felonious destruction of thousands of
 8 records, Mr. Hall conjured a benign hypothetical, divorced from the facts he knew, to
 9 justify payment to Mr. Clinger of a quarter of a million of taxpayer dollars, and his
 10 inaction. Mr. Hall's disingenuous statements establishes scienter, i.e., Mr. Hall's
 11 determination to conceal Mr. Clinger's misconduct, and his own.

12 Mr. Hall sold Mr. Clinger's separation agreement during the September 14, 2016
 13 Special Council Meeting by informing the Council the agreement was financially
 14 favorable to the City. Mr. Hall's statement to the Council memorializes the fact he knew
 15 commission of a felony was a basis to refuse payment to Mr. Clinger.⁴⁵ In fact, the
 16 agreement appears to be obtained via fraud by commission and via fraud by omission.
 17 Mr. Clinger lied about his sexual harassment activities, and probably delayed disclosing
 18 repeated destruction of City records until after he had the benefit of indemnity pursuant to
 19 the separation agreement. Mr. Clinger had a duty to disclose both activities to Mr. Hall.
 20 Notwithstanding the fact the separation agreement was obtained by fraud, Mr. Hall has
 21 done nothing to claw back the monies obtained by Mr. Clinger and his attorney.

⁴⁴ See August 11, 2017 RGJ report:

"I guess we'll have to do some discovery and determine whether or not any public records were destroyed or whether (he used the Telegraph app) as simply a means of communication between his subordinates," Hall said. Link: <http://www.rgj.com/story/news/2017/08/09/two-women-file-sexual-harassment-lawsuit-against-city-reno/552890001/>

⁴⁵ See excerpt from September 14, 2016 Reno City Council meeting minutes:

Mr. Hall stated that they would be responsible for the \$197,885 unless there was a commission of gross misdemeanor, a felony, or willful or wonton conduct. Under the terms of the contract there would have to be some significant wrongdoing, which we do not have any evidence there was, in order to avoid paying out the severance package that was agreed upon in his employment contract. What we are achieving here with the separation agreement is the release of liability and a prompt resolution of this issue. We are going to continue on with the investigation and those results will be presented to Council and made public. Mr. Hall stated that he does not have any inkling that there is anything that would allow the City to avoid paying Mr. Clinger a severance package. Link:
http://renocitynv.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1615

1 To a considerable extent, this case is the direct result of Mr. Hall's actions and
2 statements. It is important to bear in mind that, with Mr. Hall's acquiescence, the
3 plaintiffs were told they ***must complain if they knew of sexual harassment.*** They were
4 instructed to complain. When they did, Mr. Hall turned on them. Instead of immediately
5 causing a fair and thorough investigation to be conducted, while keeping his client fully
6 apprised, and then causing prompt and effective remedial action to be taken, Mr. Hall
7 delayed. Before knowing the facts, he aligned himself with Mr. Clinger. Hall then
8 structured Ms. Mercado's investigation by placing strict and very narrow parameters – to
9 the extent Ms. Mercado, a skilled Title VII attorney, was reduced to ignoring very
10 important evidence and coming to an erroneous result. Mr. Hall, in addition to his other
11 indiscretions, revealed to the perpetrator the identity of a complainant, characterized the
12 investigation as a “witch hunt,” and compromised Judge Wall’s independence by
13 sabotaging Judge Wall’s ability to interview the complainants, forcing him to rely on the
14 faulty Mercado Report as the basis for his own. And Judge Wall’s untimely investigation
15 ignored the complaints of retaliation. Mr. Hall indulged in direct retaliatory hostility
16 himself and allowed/encouraged Mr. Clinger, Ms. Thomas and others to do the same,
17 ultimately resulting in constructive discharges. Mr. Hall oversaw a payment of a quarter
18 of a million dollars and gave indemnity to a man who admitted to numerous felonies
19 while employed as City Manager. All while keeping his clients in the dark. Mr. Hall is
20 the perpetrator of much of the retaliatory hostility described in the Complaint and Jury
21 Demand. Accordingly it would be a conflict of interest for him, or any member of the
22 City Attorney’s Office, to defend the City against the actions taken, or not taken, by Mr.
23 Hall.

24 Mr. Hall treated the complainants as the enemy, based on the assumption
25 litigation would eventually ensure. He created a prolepsis. A fair and thorough
26 investigation, followed by effective remedial action, would have forestalled litigation.
27 ***The plaintiffs did not want to resign, or sue. They wanted to do their jobs in an***
28 ***environment free of high-school type sexual intrigue and cruelty.*** Instead of following
29 City policies, i.e., the policies the plaintiffs were promised would be enforced, Mr. Hall
30 treated the complaints of sexual harassment as challenges to his authority. The concept of
31 a thorough investigation and appropriate discipline were disregarded. Mr. Hall actively

1 drew battle lines at every turn. His behavior, in the context of Mr. Clinger's conduct and
 2 the instruction to the plaintiffs to report, is an abrogation of his duties as the City
 3 Attorney.

4

5 **Argument: THE CITY ATTORNEY'S OFFICE WILL ULTIMATELY BE**
 6 **RECUSED. IT WILL BE UNABLE TO TRY THIS CASE.**

7 City Attorney Karl Hall is a central figure in this case. He will be a witness.
 8 Deputy City Attorney John Shipman and Deputy City Attorney Mark Dunagan were also
 9 players/witnesses in this fact pattern. All three of these attorneys will be deposed and
 10 may be called upon to testify during trial. Mr. Hall acknowledged he will be a witness
 11 and unable to represent the City at trial on January 18, 2017.⁴⁶ Rule 3.7 of the Nevada
 12 Rules of Professional Conduct will preclude Attorney's Hall, Shipman and Dunagan from
 13 acting as advocates.

14 **Rule 3.7. Lawyer as Witness.**

15 (a) *A lawyer shall not act as advocate at a trial in which the lawyer is likely to*
 16 *be a necessary witness unless:*

- 17 (1) The testimony relates to an uncontested issue;
- 18 (2) The testimony relates to the nature and value of legal services rendered in
- 19 the case; or
- 20 (3) Disqualification of the lawyer would work substantial hardship on the client.
- 21 (b) A lawyer may act as advocate in a trial in which another lawyer in the
- 22 lawyer's firm is likely to be called as a witness unless precluded from doing so by
- 23 Rule 1.7 or Rule 1.9

24 Emphasis added.

25 Any attorney, hired to litigate at trial will have to expend considerable effort to
 26 acquire familiarity with this case. Accordingly, recusing the City Attorney's office at this
 27 time does not impose an undue burden on the City.

28 As noted, in January 2017 City Attorney Karl Hall acknowledged the need to hire
 29 independent counsel to handle this litigation. Yet instead of hiring outside counsel, Mr.
 30 Hall subsequently designated a subordinate, Mr. Cooper, to litigate this case claiming he

⁴⁶ See January 18, 2017 RGJ report:

Hall confirmed that he received one of the claims from the NERC this week and will ask the Reno City Council at an upcoming meeting to hire another outside lawyer to defend the city against that claim. Mausert has continually called Hall's role in the investigation into question, saying Hall showed favoritism to Clinger. Hall denies that, but said he likely will be called as a witness in any lawsuit and thus can't defend the city in this case. Link: <http://www.rgj.com/story/news/2017/01/18/new-clinger-documents-settlement-talks-centered-18-million-request/96735710/>

1 would not be involved personally.⁴⁷ Mr. Hall was not supposed to be involved in the Wall
2 Investigation, but he nonetheless sabotaged that investigation. Rule 1.10 of the Nevada
3 Rules of Professional Conduct reads:

4 **Rule 1.10 Imputation of Conflicts of Interest.**

5 (a) *While lawyers are associated in a firm, none of them shall knowingly*
6 *represent a client when any one of them practicing alone would be prohibited*
7 *from doing so by Rules 1.7, 1.9, or 2.2, unless the prohibition is based on a*
8 *personal interest of the prohibited lawyer and does not present a significant risk of*
9 *materially limiting the representation of the client by the remaining lawyers in the*
10 *firm.*

11 Emphasis added.

12 Pursuant to Rule 1.10 the City Attorney's office cannot litigate this case at trial.
13 Mr. Hall, the central actor in this case, supervises Mr. Cooper, and all other attorneys in
14 his office. Further, the proposition Mr. Cooper can represent the City absent supervision
15 by Mr. Hall breaches the integrity of the attorney-client relationship between the City
16 Attorney's Office and the City. Mr. Cooper is not an elected official. Independent counsel
17 must be retained for trial. ***Recusal at this time will ensure a fair and independent***
18 ***handling of the case prior to trial.***

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⁴⁷ See August 11, 2017 RGJ report:

Reno City Attorney Karl Hall said the allegations in the lawsuit are without merit and vowed to defend the city. Hall, who is accused throughout the lawsuit of bungling the investigations into the women's complaints, said his office, and not an outside lawyer, will handle the defense against the lawsuit. "I am going to assign it to (Deputy City Attorney) William Cooper," Hall said. "He is going to handle it and I'm not going to be involved personally in the defense." Link:

<http://www.rgj.com/story/news/2017/08/09/two-women-file-sexual-harassment-lawsuit-against-city-reno/55289001/>

Conclusion

This case concerns Mr. Hall's conduct, and secondarily that of Mr. Clinger. ***This case exists because of Mr. Hall's decisions and actions.*** Mr. Hall's conduct has fallen so far below the standard of care as to create a conflict of interest. Yet, as this case moves forward, Mr. Hall who has already demonstrated a penchant for failing to provide his client with material information and engaging in misconduct, will be in control. The City Attorney's Office should be recused.

DATED this 31st day of October, 2017.

/s/ Mark Mausert

Mark Mausert
NV Bar No. 2398
930 Evans Avenue
Reno, NV 89512
TELEPHONE:(775) 786-5477
FACSIMILE: (775) 786-9658
Attorney for Plaintiffs

1 **CERTIFICATE OF SERVICE**
2

3 I hereby certify, under penalty of perjury that I am an employee of Mark Mausert,
4 Esq.; I am over the age of eighteen (18) years; I am not a party to, nor hold an interest in
5 this action; and on the date set below, I sent via First Class mail, a true copy of the
6 foregoing document, **PLAINTIFF'S MOTION TO RECUSE THE RENO CITY**
7 **ATTORNEY'S OFFICE**, with the United States Postal Service in Reno, Nevada, to the
8 address below:

9 WILLIAM E. COOPER
10 Reno City Attorney's Office
11 P.O. Box 1900
12 Reno, Nevada 89505

13
14
15 DATED this 31st day of October, 2017.

16
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19 /s/ Brittaney Martin
20 Employee of Mark Mausert, Esq.
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1 **INDEX OF EXHIBITS**

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3	Exhibit One.....	Redacted Wall Report
4	Exhibit Two.....	Redacted Mercado Report
5	Exhibit Three.....	City Policy 607
6	Exhibit Four.....	Clinger Separation Agreement
7	Exhibit Five.....	Declaration of Maureen McKissick
8	Exhibit Six.....	Declaration of Deanna Gescheider
9	Exhibit Seven.....	Declaration of Brianna Wolf

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